



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Coordinator
Department of Medical Assistance Services

FROM: BETH MCDONALD
Special Counsel to DMAS

DATE: July 10, 2006

**SUBJECT: Final Exempt Regulation Concerning Personal Maintenance Allowance
Increase for Certain Medicaid Home and Community-Based Services
Waivers**

I have reviewed the attached final exempt regulation concerning the personal maintenance allowance increase for certain Medicaid home and community-based services waivers.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Va. Code §32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the requirements of Article 2 of the Administrative Process Act and has not exceeded that authority.

The amendments to the regulation would cover personal maintenance allowance for certain Medicaid home and community-based services waivers pursuant to Chapter 302 of the 2006 Acts of the Assembly, Item MM, which states that DMAS "shall amend all §1915(c) home and community-based care waivers, excluding the AIDS Waiver, and any related state regulations to set patient pay requirements at 165 percent of Supplemental Security Income for individuals enrolled in the waivers. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment date of this act." Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the

Brian McCormick

May 18, 2005

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procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

If you have any questions, please contact me at 786-3890.

cc: Kim F. Piner, Esquire

Attachment